

REMARKS

The Examiner has provisionally rejected Claims 1, 2, 9, 21, and 27-30 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 9, 39, and 40 of copending Application No. 10/113,875 in view of Khaishgi et al. (US 6,658,394 B1). Applicant respectfully asserts that such rejection is overcome in view of the filing of the terminal disclaimer submitted herewith.

The Examiner has rejected Claims 1, 2, 9, 21, 22, and 27-30 under 35 U.S.C. 103(a) as being unpatentable over Khaishgi, in view of Bates et al. (U.S. Patent No. 6,721,721), and further in view of Bunker, V et al. (U.S. Patent Publication No. 2003/0028803). Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove to the independent claims. Specifically, applicant has amended the independent claims to at least substantially include the subject matter of former dependent Claim 22.

With respect to the subject matter of former Claim 22 (now at least substantially incorporated into the independent claims), the Examiner has relied on Figure 2, Numeral 8 and 4 from the Khaishgi reference to make a prior art showing of applicant's claimed technique "wherein at least one of the first and second verification operations includes scanning the on-line service from a remote address on the network." Specifically, the Examiner has argued that "[v]erification of [m]erchant 4 is done from the Certification Server which includes Theft Detection Modules 28, [and] Certification Service 8 can be seen remotely located from [m]erchant 4."

Applicant respectfully disagrees and asserts that with respect to the figure and numerals relied on by the Examiner, Khaishgi discloses that "[s]eal issuer 8 verifies the credentials, policies or business practices of each Merchant 4 and issues a corresponding seal of certification to each merchant 4 upon verification" (Col. 2, lines 44-46). Additionally, Khaishgi discloses that "seal issuer might, for example, verify that merchant 4 is a legitimate business merchant that complies with, or agrees to conform to,

certain standards” that “seal issuer 8 issues an electronic seal to merchants 4 that agree to participate in the web-based problem solving service,” that “seal issuer 8 can... verify merchants 4 compliance with privacy or security requirements,” and that “seal issuer 8 may perform a nominal amount of certification before issuing the seal such as verifying the contact information” (Col. 2, lines 48-62 – emphasis added). Further, Khaishgi discloses that “[t]heft detection modules 28 analyze request log 24 in order to detect any misuse or theft of an electronic seal” and “also use spidering technology to search network 12 for all occurrences of issued seals” (Col. 4, lines 8-23 – emphasis added)

However, merely verifying the credentials, policies, or business practices of a merchant, including verifying compliance with standards and privacy or security requirements, and verifying the contact information of the merchant, in addition to analyzing a request log and searching a network for issued seals, as in Khaishgi, fails to disclose a technique “wherein at least one of the first and second verification operations includes scanning the on-line service from a remote address on the network” (emphasis added), as claimed by applicant.

In addition, applicant has further amended the independent claims to distinguish applicant’s claim language from the Khaishgi reference, as follows:

“wherein the scanning produces a set of XML files including information about open ports, available service, network protocols, security exposures and vulnerabilities associated with a device providing the online service” and

“wherein a scan header record associated with the scanning is stored in a database, the scan header record including a date, launch time, duration and a number of vulnerabilities classified by severity level.”

Applicant respectfully asserts that merely verifying the credentials, policies, or business practices of a merchant, including verifying compliance with standards and privacy or security requirements, and verifying the contact information of the merchant,

in addition to analyzing a request log and searching a network for issued seals, as in Khaishgi , fails to disclose a technique “wherein the scanning produces a set of XML files including information about open ports, available service, network protocols, security exposures and vulnerabilities associated with a device providing the online service” (emphasis added), as claimed by applicant. Nowhere in Khaishgi does “the scanning produces a set of XML files” (emphasis added), as claimed.

Additionally, merely verifying the credentials, policies, or business practices of a merchant, including verifying compliance with standards and privacy or security requirements, and verifying the contact information of the merchant, in addition to analyzing a request log and searching a network for issued seals, as in Khaishgi , fails to disclose a technique “wherein a scan header record associated with the scanning is stored in a database, the scan header record including a date, launch time, duration and a number of vulnerabilities classified by severity level” (emphasis added), as claimed by applicant. Nowhere in Khaishgi is “a scan header record associated with the scanning... stored in a database” (emphasis added), in the context claimed by applicant.

To establish a *prima facie* case of obviousness, three basic criteria must be met: First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art excerpts, as relied upon by the Examiner, fail to teach or suggest all of the claim limitations, as noted above.

Still yet, applicant brings to the Examiner's attention the subject matter of new Claims 34-45 hereinabove, which are added for full consideration.

Again, a notice of allowance or a proper prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

To this end, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAIIP647).

Respectfully submitted,
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